Supreme Court, U.S.
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No. 98-1093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ADCO OIL COMPANY,

Petitioner,

v.

THE HOME INSURANCE COMPANY OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is it consistent with the public policy of Illinois to enforce the plain language of an insurance policy's reporting requirement?

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OPINIONS BELOW

The opinion of the U.S. District Court for the Northern District of Illinois is reported at *Home Insurance Co. v. Adco Oil Co.*, 987 F. Supp. 1057 (N.D. Ill. 1997). The opinion of the U.S. Court of Appeals for the Seventh Circuit, reversing the district court, is reported at *Home Insurance Co. v. Adco Oil Co.*, 154 F.3d 739 (7th Cir. 1998). Both opinions are faithfully reproduced in the appendices to Adco Oil Company's petition for writ of *certiorari*.

STATEMENT OF FACTS

Adco Oil Company sued Illinois attorney Michael Rovell for malpractice after Rovell allegedly botched a lawsuit in which he had represented Adco. Rovell was insured under a liability-insurance policy issued by The Home Insurance Company of Illinois, but that policy required that a policyholder report any potentially covered claims to the company during the effective period of the policy—and Rovell did not report Adco's lawsuit against him to The Home until after the policy had expired.

The Home filed this diversity suit under the Declaratory Judgment Act, seeking a determination that it was not obligated to defend or indemnify Rovell in Adco's lawsuit because Rovell had breached the policy's reporting requirement. Adco responded that the policy requirements should be disregarded because Rovell's breach had been deliberate. The district court agreed with Adco's argument and entered summary judgment in its favor—but the Court of Appeals reversed, agree-

ing with The Home that Rovell was not entitled to the benefits under a policy that he had undisputedly breached.

Adco seeks further review in this Court.

ARGUMENT

Certiorari should be denied. Adco offers this Court an issue that is purely one of state law—and insists that the purportedly unique circumstances of this case call for an exception to a proposition that is otherwise unchallenged under that law. Either feature suggests that this case is unsuitable for review in this Court; in concert, both call for this Court to deny Adco's petition.

I. The Seventh Circuit's Application of Illinois Public Policy Does Not Call For Review in This Court.

Purely a matter of Illinois law, the rule of decision that governs this case is not something calling for this Court's attention. Adco does not even suggest that this case is controlled by anything other than the law of Illinois, and other than a brief nod in one of its "Questions Presented for Review," does not suggest the presence of any topic of national import. By its own argument, Adco urges this Court to devote itself to an interpretation of one state's public policy.

As in the courts below, Adco contends that a nearly two-decade-old opinion of the Appellate Court of Illinois contains the abstract passage that provides the rule of decision in this case. In Adco's argument, the Court of

Appeals misconstrued the public policy of Illinois because it did not agree with Adco's view of a passage in *Reagor v. Travelers Insurance Co.*, 92 Ill. App. 3d 99, 415 N.E.2d 512 (1st Dist. 1980). The passage on which Adco rests the whole of its argument reads as follows:

> Neither the insured nor the insurer, acting separately or together, may act to defeat the rights of the injured party. [PET'N FOR WRIT OF *CERTIORARI* at 7.]

Adco urges that this sentence defeats the notice requirement contained in The Home's policy, and that Rovell's failure to report Adco's lawsuit to The Home cannot vitiate his coverage under that policy—despite the undisputed fact that his failure was a deliberate breach of the policy.

But the passage from *Reagor* is too abstract to support the weighty argument that Adco makes; as the Court of Appeals observed, "propositions so abstract rarely decide concrete cases." Slip op., APPENDIX TO PET'N at A-6. Indeed, Illinois law is replete with cases in which the actions of policyholders have eliminated the coverage they might otherwise possess. Provisions requiring prompt or immediate notice of a suit are more than mere technical requirements; they are valid conditions precedent. *Kerr v. Illinois Central R.R. Co.*, 283 Ill. App. 3d 574, 670 N.E.2d 759, 765 (1st Dist. 1996); *Industrial Coatings Group, Inc. v. American Motorists Ins. Co.*, 276 Ill. App. 3d 799, 658 N.E.2d 1338, 1343 (1st Dist. 1995). A policyholder may not disregard those provisions with impunity. *American States Ins. Co. v. National Cycle, Inc.*, 260 Ill. App. 3d 299, 631 N.E.2d 1292, 1300 (1st Dist. 1994). A policyholder's

breach of those conditions relieves the insurer of any obligation it might otherwise have with respect to the claim for coverage. *American Country Ins. Co. v. Cash*, 171 Ill. App. 3d 9, 524 N.E.2d 1016, 1018 (1st Dist. 1988); *Reisman v. Delgado*, 117 Ill. App. 3d 331, 453 N.E.2d 902, 905 (1st Dist. 1983).

Importantly, an insurer need not demonstrate any prejudice resulting from the policyholder's breach of the notice condition. Prejudice to the insurer may be taken into account, but its absence does not excuse the insured's unreasonable delay. *Jones v. Universal Cas. Co.*, 257 Ill. App. 3d 842, 630 N.E.2d 94, 102 (1st Dist. 1994). Indeed, an asserted lack of prejudice is pertinent only where the insured has a good excuse or the delay was brief. *Twin City Fire Ins. Co. v. Old World Trading Co.*, 266 Ill. App. 3d 1, 639 N.E.2d 584, 589 (1st Dist. 1993).

Notwithstanding Adco's argument, none of this is at all inconsistent with *Reagor*. As the Court of Appeals recognized, that decision addressed only the agreement between the insurer and the insured that a certain policy did not cover the subject accident. The Appellate Court of Illinois concluded that this was not binding on a third party, an injured individual. The Court of Appeals in the present case acknowledged the limited scope of the *Reagor* decision:

> All *Reagor* holds is that this bare agreement is not conclusive against an injured party, any more than a cancellation of the policy (after the accident) and a refund of the premium to the insured would be. [Slip op., APPENDIX TO PET'N at A-6.]

Adco points to nothing in *Reagor*—or in any other decision, for that matter—indicating that *Reagor* stands for anything more broad than this.

The Seventh Circuit duly noted two specific and unchallenged public policies of the state of Illinois: first, that attorneys are not required to maintain malpractice-liability insurance, and second, that Illinois enforces notice provisions in liability-insurance policies. Adco does not dispute either. Instead, Adco insists that the Seventh Circuit answered the wrong question; in Adco's argument, the case turns upon an interpretation of *Reagor*, a 1980 decision of the Appellate Court of Illinois:

> [T]he question should be whether or not Illinois public policy as expressed in *Reagor* would bar [The Home] from raising this otherwise general rule of law upholding policy defenses. [PET'N FOR WRIT OF *CERTIORARI* at 16.]

The Seventh Circuit, unlike Adco, considered *Reagor* alongside Illinois law that made Adco's argument more dubious. Adco relies almost exclusively upon *Reagor*, as if that decision were the only source of public policy in Illinois. But the public policies of Illinois—like those of most states—are many, and in certain circumstances, some must yield to others. Adco wholly overlooks, for instance, the Illinois public policy of enforcing the terms of a contract as they are written.[1] *See*, *e.g.*,

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[1] Adco's insistence upon ignoring the plain language of The Home's policy is particularly improper because it is unnecessary. Contrary to its plea in this Court, Adco need not look to

(continued...)

Bruder v. Country Mut. Ins. Co., 156 Ill. 2d 179, 188-89, 620 N.E.2d 355, 359 (1993); *Hagler v. Country Mut. Ins. Co.*, 274 Ill. App. 3d 896, 900, 655 N.E.2d 26, 28 (5th Dist. 1995).

Other features of Illinois law—features that Adco ignores in this Court—militate still further against Adco's argument that *dictum* in *Reagor* should control this case. As the Seventh Circuit observed, Illinois does not require attorneys to purchase malpractice-liability insurance, and it does not prevent clients from retaining uninsured lawyers to represent them. This sets the present case still further apart from *Reagor*, which concerned car insurance; state legislation in Illinois requires drivers to maintain specified limits of auto insurance, embodying the policy that the public at large—and not just the policyholder—has an interest in car insurance.

But the same cannot be said of legal-malpractice insurance. Adco does not dispute the fact that Illinois permits attorneys to practice without insurance, but it urges this Court nonetheless to find that The Home ought to be forced to overlook his undisputed breach. Yet there is likewise no dispute that Rovell could have voided his insurance coverage deliberately by cancelling his policy, and there is no dispute that he could have

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[1] (...continued)
The Home's policy for recompense; as the Court of Appeals observed, there are other sources of compensation available—among them the law firm where Rovell was a partner at the time of his alleged malpractice, or that firm's liability carrier. APPENDIX TO PET'N at A-7. Adco is silent as to these sources.

deliberately chosen not to obtain a policy in the first place. Moreover, Adco openly concedes that Rovell could have voided his coverage through negligence. Adco insists that because Rovell deliberately voided his coverage in another way, by deliberately breaching a policy condition, his breach ought to be ignored—and that The Home ought to be required to fulfill its duties to Rovell under the policy that he breached.

But there is nothing in Illinois public policy that supports any such rule. In Illinois, as in other jurisdictions, the most reliable source of public policy is the body of laws passed by the legislature. *Newby v. Lake Zurich Community Unit Dist. 95*, 136 Ill. App. 3d 92, 105, 482 N.E.2d 1061, 1071 (2d Dist. 1985). Yet despite Adco's public-policy argument, the Seventh Circuit found no statute that elevates attorney-liability coverage to the level of car insurance, and Adco points to none. Adco as much as concedes that this case is governed by the law of Illinois, but offers no reason that the Court of Appeals' interpretation of that law is a subject that merits review in this Court. Without such a showing, review in this Court is improper, and *certiorari* should be denied.

II. The Seventh Circuit's Decision Concerns Unique Factual Circumstances That Are Unlikely to Yield a General Rule of Law.

The impropriety of further review is also demonstrated by the peculiarity of the factual circumstances at issue here. By Adco's own concession, an insured is not entitled to coverage where he has negligently voided coverage through an inadvertent failure to notify the

insurer during the policy period. PET'N FOR WRIT OF *CERTIORARI* at 13. Indeed, Adco's argument is fundamentally premised upon the contention that Rovell deliberately violated the policy's reporting requirement; indeed, Adco concedes that were that circumstance different—had Rovell *inadvertently* failed to report the lawsuit to The Home—the breach would have vitiated The Home's duties under the policy.

The facts of this case therefore represent a decidedly unusual situation: the circumstance in which a policyholder deliberately forfeits a known source of indemnification for which he has paid a premium. This circumstance—which Adco claims to be the controlling factual circumstance of this case—is a rare one indeed. Adco's petition in this Court is silent as to why a policyholder might take such actions, and it offers no explanation for Rovell's own decision to forfeit coverage under The Home's policy. There is no evident reason to expect that this unique factual scenario will play out with sufficient frequency, even nationwide, to call for this Court to issue a ruling as to how to address it—especially where there is no suggestion that the laws of the states are inadequate to the task.

III. The Seventh Circuit's Interpretation of One State's Public Policy Is Unlikely to Have a National Impact.

Finally, there is no merit to Adco's perplexing suggestion that the Seventh Circuit's interpretation of Illinois public policy might have some substantial national impact. Even Adco does not contend that this case con-

cerns anything but the law of the state of Illinois, where the Seventh Circuit sits; as Adco itself concedes throughout its petition, the decision for which it seeks review is one that construed the public policy of that one state. With a single exception, Adco's petition in this Court cites no law from any jurisdiction other than Illinois—and tellingly, that one exception is a Seventh Circuit decision interpreting Illinois law.

In stark contrast to this uniformly state-law-governed matter, Adco prays for *certiorari* on the ground that the Seventh Circuit's interpretation of Illinois law is an event of national significance. This argument is as inappropriate as it is irrational. Given the degree to which Illinois law controls this case, its substantive effect is limited to the law of that state. What effect this case might have on the law of other jurisdictions is a mystery—and it is one that Adco's petition does nothing to help solve.

CONCLUSION

By its own admission, Adco asks this Court to adopt an interpretation of a narrow factual exception to an otherwise undisputed principle of purely state law—one that the Court of Appeals rejected after thoroughly considering the very arguments and authorities that Adco offers here. But Adco offers no issue of proper significance to call for this Court's review. Adco's consternation notwithstanding, the questions it presents are

hardly significant enough to be reviewed by this Court, and wholly insufficient to justify a writ of *certiorari*.

Such a writ should be denied.

Respectfully submitted,

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